IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 9TH FEBRUARY 2007 / 20TH MAGHA 1928

WP(C).No. 27765 of 2005(E)

PETITIONERS:

1. N. SHAMSUL HUNDA,
   S/O. THE LATE NOOR MOHAMMED, AGED 53 YEARS,
   DEPUTY CONSERVATOR OF FOREST (NON-CADRE),
   RESIDING AT 22/382B, BYE-PASS JUNCTION,
   THIRUVANNOOR, KOZHIKODE, PIN-673 029.

2. K.K. CHANDRAN,S/O.SRI.P.V.KORAN NAMBIAR,
   AGED 54,DEPUTY CONSERVATOR OF FOREST,PRESENTLY
   PRSENTLY WORKING AS MANAGING DIRECTOR, THE
   PHARMACEUTICAL CORPN.(INDIGENOUS MEDICINE)KERALA
   LTD.,THRISSUR ON DEPUTATION BASIS,R/AT STAFF QTRS.
   `OUSHADI' COMPLEX, SHORNUR ROAD, THRISSUR.

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
SRI.BABU JOSEPH KURUVATHAZHA
SRI.K.I.SAGEER

RESPONDENTS:

1. STATE OF KERALA,
   REPRESENTED BY ITS CHIEF SECRETARY,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. SECRETARY TO GOVERNMENT,
   DEPARTMENT OF FOREST AND WILD LIFE,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. UNION PUBLIC SERVICE COMMISSION,
   REPRESENTED BY ITS CHAIRMAN, NEW DELHI.

4. SELECTION COMMITTEE SET UP
   IN ACCORDANCE WITH REGULATION 3 OF THE IFA
   (APPOINTMENT BY PROMOTION) REGULATIONS, 1955,
   REPRESENTED BY THE CHAIRMAN, UNION PUBLIC SERVICE
   COMMISSION, NEW DELHI.

5. UNION OF INDIA,
   REPRESENTED BY ITS SECRETARY, MINISTRY ENVIRONMENT
   AND FORESTS, PARYAVARAN BHAVAN, CGO COMPLEX,
   LODI ROAD, NEW DELHI-110 003.

BY ADV. SRI.GEORGE JOSEPH, ADDL.CGSC
GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1	True photocopy of Order No.E6-16771/76 dated 19.11.1976 issued by the Chief Conservator of Forests (Development).
Ext.P2	True photocopy of the select list published in the Kerala Gazette Extraordinary dated 24.5.1995.
Ext.P3	True photocopy of the Order bearing No.G.O.(Rt) No.318/95/F&WLD dated Tvm. 21.8.1995 issued by the 2nd respondent.
Ext.P4	True photocopy of the Order bearing No.G.O.(Rt) No.17/2003/F&WLD dated Tvm.09.01.2003 issued by the second respondent.
Ext.P5	True photocopy of the representation dated 28.10.2004 submitted by the first petitioner before the second respondent.
Ext.P6	True copy of the representation dated 02.11.2004 submitted by the second petitioner before the second respondent.
Ext.P7	True photocopy of the Order bearing No.G.O.(Rt) No.201/2004/F & WLD dated Tvm.14.5.2004 issued by the 2nd respondent.
Ext.P8	True photocopy of the Order bearing No.G.O.(Ms) 5/95/F&WLD dated 22.2.1995 issued by the second respondent.
Ext.P9	True copy of the judgment in O.P.No.10226/93 dated 1.1.95 of this Hon'ble Court.
Ext.P10	True copy of the judgment in O.P.No.6215/1995 dated 24.3.2003 of this Hon'ble Court.
Ext.P11	True photocopy of the Order bearing No.G.O.(Ms) No.506/2004/F&WLD dated Tvm. 10.12.2004 issued by the second respondent.
Ext.P12	True copy of the Order dated 23.1.2006 in W.P.(C) No.27765/05 of this Hon'ble Court.
Ext.P13	True copy of the Order bearing No.12938/F1/05/F&WLD dated 18.2.2006 issued by the Government.
Ext.P14	True copy of the Order bearing No.12938/F1/05/F&WLD dated 18.2.2006 issued by the Government.
Ext.P15	True copy of the representation dated 6.3.2006 submitted by the first petitioner before the Government.

Ext.P16 True copy of the representation dated 6.3.2006 submitted by the second petitioner before the Government.

Ext.P17 True copy of the Order bearing No.G.O.(Rt) 319/06/F&WLD dated Tvm. 31.7.2006 issued by the Government.

Ext.P18 True copy of the Order bearing No.15076/A1/05/F&WLD dated 16.1.2006 issued by the second respondent.

Ext.P19 True copy of the explanation dated 10.3.2006 submitted by the first petitioner.

RESPONDENT'S EXHIBITS:

NIL

//true copy//

P.S. to Judge.

J.M. JAMES, J.

W.P.(C) No. 27765 of 2005

Dated this the 9th February, 2007.

J U D G M E N T

The writ petitioners are before this Court with the complaint that their probation had not been declared by the first respondent, although they have completed the required period of probation, as contemplated under the Special Rules for the Kerala Forest Service, in short 'the Special Rules', and also as per the relevant rules relating to the declaration of probation under the Kerala State and Subordinate Service Rules, in short 'the K.S & S.S.R'. Hence pray that the first respondent may be directed to declare their probation, and issue orders granting consequential reliefs.

2. The question that arise for consideration in this writ petition is whether an employee who had, though successfully completed the prescribed or extended period of probation, on the appointed post, but not having been declared of probation, and continuing in service with higher grade conferred, could later be denied of further promotion, on the employee not having duly completed the

probation, and also whether Rule 20A of the K.S. & S.S.R would come to the aid of the Government in not declaring the probation of an employee.

3. The brief facts required for the disposal of the writ petition are that, the writ petitioners have been appointed as Forest Range Officer in the Forest Department, by the Government, as per the order, dated 19.11.1976, of the Chief Conservator of Forests (Development). They had joined the service on 19.11.1976 itself. After the practical training, they were appointed as Probationary Ranger, under the direct recruitment vacancies. They have successfully completed their probation, and had been declared as having satisfactorily completed the probation, as per the proceedings, dated 30.9.1984, in respect of the first writ petitioner, and on 20.4.1984, in respect of the second writ petitioner. Accordingly, the writ petitioners were confirmed in the cadre of Forest Range Officer, with effect from 19.11.1976, the date of entry into the service.

4. The names of the writ petitioners were thereafter included in the select list of officers of Forest Department for promotion against the vacancies of Assistant Conservator of Forests, as prepared by the Departmental Promotion Committee (Higher), which met on 3.4.1995. The first respondent has approved the same

and the said list was published in the Kerala Gazette Extra Ordinary, dated 24.5.1995, as could be seen from Ext.P2. The names of the writ petitioners figure as Sl.Nos.1 and 2 under the select list, for the year 1994-95.

5. As per the Government Order, dated 21.8.1995, the writ petitioners were appointed by transfer to the post of Assistant Conservator of Forests, as could be seen from Ext.P3, Serial Nos. 1 and 2 therein being the writ petitioners. They have joined the post on 28.8.1995. Therefore, under Rule 6(b)(ii) of the Special Rules, the Assistant Conservator shall, if recruited by transfer, be on probation for a total period of two years on duty within a continuous period of three years.

6. Though the probation of the writ petitioners had not been declared, as required under Rule 6(b)(ii) of the Special Rules, the writ petitioners continued to work in the post of Assistant Conservator of Forests. Under Ext.P4 order, dated 9.1.2003, they had been granted the senior grade in the post of Assistant Conservator of Forests. Ext.P4 further reveal that the Assistant Conservators of Forests, under Sl.Nos.42 to 87 therein, were granted Senior Grade on different dates, the first writ petitioner, with effect from 1.7.2001 and the second writ petitioner, with effect from 1.10.2001, (Sl.Nos.84 and 85).

Thus, although the probation, as required under the Special Rules, is for a period of two years, in a continuous period of three years, without declaring the probation and passing any orders, they were granted senior grade in Assistant Conservators of Forest.

7. The Special Rules only state that the Assistant Conservator, if recruited by transfer, shall be on probation, for a period of two years, but do not say the further procedure to be followed in declaring the probation or extending the probation. However, Rule 20 (a) of the K.S & S.S.R lays down that,

> "At the end of the prescribed or extended period of probation, as the case may be, the Appointing Authority shall consider the probationer's suitability for full membership of the service, class or category for which he was selected".

8. Rule 20(c) of the K.S & S.S.R further lays down that,

> "If the Appointing Authority decides that the probationer is not suitable for such membership, it shall unless the period of probation is extended, under Rule 21, by order discharge him after giving him a reasonable opportunity of showing cause against the action proposed to be taken in regard to him".

9. Rule 24(a) of the K.S & S.S.R states that,

> **24. Appointment of full members**:-
>
> (a) Subject to the provisions of rule 8 an approved probationer shall be appointed to be a full member of the service in the class or category for which he was selected, at the earliest possible opportunity, in any substantive vacancy which may exist or arise in the permanent cadre of such class or category and if such vacancy existed from a date previous to the issue of the order of appointment, he may be so appointed with retrospective effect from the date or, as the case may be, from any subsequent date from which he was continuously on duty as a member of the service in such class or category or in a higher class or category.

10. In the case at hand, the writ petitioners joined as Assistant Conservators of Forests on 28.8.1995, and were granted senior grade in that post, under Ext.P4, as discussed above. Neither their probation had been declared 'at the end of the prescribed period of three years', nor the Appointing Authority had resorted to issue of any show cause notice, for any action proposed to be taken against them, regarding their work and conduct, as well as the merit and suitability of the writ petitioners, during the above period, in the post of Assistant Conservator of Forests, or for discharging them from the service, in case, if they were found unsuitable.

11. As the writ petitioners had completed about eight years of service, they are entitled for appointment by promotion to the Indian Forest Service. The requirements for the promotion are not only that they have to complete the prescribed period of eight years, but also their appointments must be substantive in the category of Assistant Conservator of Forests. Because of the non-declaration of the probation in the post of Assistant Conservator of Forests, they have made Exts.P5 and P6 representations, requesting to declare their probation in the post of Assistant Conservators of Forests, and also consequential confirmation. It is seen from Ext.P7 that few of the Assistant Conservators of Forests had been declared to have been completed their probation, as per the Government Order, dated 14.5.2004. But the petitioners were not included in Ext.P7 or thereafter.

12. In this writ petition, an interim order, dated 23.1.2006, was passed directing the Government to take a decision about the declaration of the probation of the writ petitioners, in the post of Assistant Conservators of Forests, and issuing of confirmation under Rule 24 of the K.S & S.S.R . But their probations were not declared, on the ground that there are disciplinary proceedings initiated against the writ petitioners, under Exts.P13 and P14.

Therefore, the writ petitioners have preferred Exts.P15 and P16 review petitions. Under Ext.P17, those review petitions have been rejected holding that their probation cannot be declared, because of the operation of Rule 20A of the K.S & S.S.R. The writ petitioners, therefore, pray to quash Exts.P13, P14 and P17 orders of the first respondent, as per the amended writ petition, and also to order the first respondent to declare their probations and confirmation, under prayer No.3, from the respective dates of their entitlement.

13. The Apex Court in **State of Punjab v. Dharam Singh** *(AIR 1968 S.C. 1210)*, had considered the impact of non declaration of probation within the prescribed period mentioned in the Rule, in that case, Rule 6(3) of the Punjab Educational (Provincialised Cadre) Class III Rules 1961, wherein, it was held that if the service rules fix a certain period of time beyond which the probationary period cannot be extended, and an employee appointed or promoted to a post on probation is allowed to continue in that post after completion of the maximum period of probation, without an express order of confirmation, he cannot be deemed to continue in that post as a probationer by implication. In such situation, an inference is to be

drawn that such an employee, allowed to continue in the post, on completion of the maximum period of probation, had been confirmed in that post by implication.

14. The above principle is seen followed by a Division Bench of the Apex Court in **State of Haryana and others v. Rajendra Sareen** *(AIR 1972 SC, 1004),* wherein, it was discussed that if the appointing authority does not pass an order, extending the probation or confirming the appointment of an employee, and if such an employee is allowed to continue in the post, the inference is that the incumbent becomes a permanent employee, beyond the period of probation prescribed, in this case, three years.

15. A seven Judge bench of the Apex Court had an occasion to consider in **Samsher Singh v. State of Punjab and another** *(AIR 1974 SC 2192)*, wherein the Court drew an inference that, if the employee is allowed to continue in the post, on completion of the maximum period of probation, he is confirmed in the post by implication. However, in that case, the High Court prima facie found that the work, as well as the conduct of the appellant therein, was unsatisfactory, and, therefore, a show cause notice was given as to,

why his service should not be terminated, before the completion of probation period of three years. However, in the case at hand, no such facts arise, as had been discussed above.

16. In **High Court of M.P. and others v. Satya Narayan Jhavar** *(2001 (7) SCC 161)*, the question of "deemed confirmation" was considered. The Court, at paragraph 11, held as follows:-

> "11. The question of deemed confirmation in service jurisprudence, which is dependent upon the language of the relevant service rules, has been the subject-matter of consideration before this Court, times without number in various decisions and there are three lines of cases on this point. One line of cases is where in the service rules or in the letter of appointment a period of probation is specified and power to extend the same is also conferred upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed. In such cases there is no bar against termination at any point of time after expiry of the period of probation. The other line of cases is that where while there is a provision in the rules for initial probation and extension thereof, a maximum period for such extension is also provided beyond which it is not permissible to extend probation. The inference in such cases is that the officer concerned is deemed to have been confirmed upon expiry of the maximum period of probation in case before its expiry the order of termination has not been passed. The last

> line of cases is where, though under the rules maximum period of probation is prescribed, but the same requires a specific act on the part of the employer by issuing an order of confirmation and of passing a test for the purposes of confirmation. In such cases, even if the maximum period of probation has expired and neither any order of confirmation has been passed nor has the person concerned passed the requisite test, he cannot be deemed to have been confirmed merely because the said period has expired."

17. The automatic confirmation of probation, after the maximum period of service, as per the relevant rules, came up for consideration, before the Apex Court in **Registrar, High Court of Gujarat and another v. C.G.Sharma** *(2005(1) SCC 132).* Wherein, discussing on Rule 5(4) of the Gujarat Judicial Service Recruitment Rules, 1961, which state that the probationary period is for two years, and on expiry of the period, the employee may be confirmed if, (a) there is a vacancy; and (b) his work is found be satisfactory. The Apex Court held that there being no maximum period of probation prescribed in Rule 5(4) of the Gujarat Judicial Service Recruitment Rules, there is no question of automatic confirmation. An order should be passed declaring and confirming the probation, only when there is a vacancy and his work is found to be satisfactory.

18. Under Rule 2(10) of the K.S & S.S.R., a "Probationer" in a service means a member of that service who has not completed his probation.

19. Under Rule 2(3) of the K.S & S.S.R., an "Approved probationer" in a service, class or category means a member of that service, class or category who has satisfactorily completed his probation and awaits appointment as a full member of such service, class or category.

20. Through Exts.P13 and P14, the representations of the writ petitioners, requesting for declaring their probations, had been rejected. It is stated, in Ext.P13 that as per the charge memo, dated 16.1.2006, issued to the first writ petitioner, he is alleged to have committed supervisory and security lapses, as well as dereliction of duty, in connection with the theft of the Olavakode Strong Room case. Explanations I and II of Rule 20 of the K.S & S.S.R has been relied on to conclude that the work and suitability of the incumbent has to be considered, till the date of decision, inclusive of the extended period of probation.

21. In Ext.P14, in respect of the second writ petitioner, it is stated that, there had been irregularities in connection with the final felling work of eight teak plantations in Kasargode Range during

1998-99 and 1999-2000. The misappropriation of fund was also alleged. As per the enquiry report, dated 30.9.2005, of the Chief Conservation of Forests (Vigilance), there are seven instances of various irregularities and allegations made against the second writ petitioner. Therefore, because of the pendency of the disciplinary cases against him, the probation had not been declared and confirmation under Rule 24 of the K.S & S.S.R had not been made.

22. The learned counsel appearing for the writ petitioners contented that in respect of the first writ petitioner, admittedly the charge memo had been issued, as stated in Ext.P13, only on 16.1.2006, which is much after the maximum period of probation prescribed under Rule 20(a) of the K.S & S.S.R, as well as under the Special Rules. There is no order passed extending the period of probation, as contemplated under Rule 21 of the K.S & S.S.R . Therefore, the counsel submits that the reasons given in not declaring the probation, and confirming the service of the first writ petitioner, as stated in Ext.P13, is not sustainable.

23. The learned counsel further contented that Ext.P14 does not disclose the issuance of any charge memo to the second writ petitioner, or initiation of any departmental proceedings, except making some allegations. Though the irregularities connected with the

felling of eight teak plantations in Kasargod Range was during the period 1998-99 and 1999-2000, no formal charge memo had been issued starting the departmental proceedings so far, which would prevent the declaration of the probation, on completion of the period, as contemplated under Rule 6 of the Special Rules, as well as Rule 20 of the K.S & S.S.R., submit the counsel.

24. I have also stated above that the writ petitioners had joined as Assistant Conservator of Forests on 28.8.1995. The period of probation was two years for a continuous period of three years. In the usual circumstances, unless the writ petitioners are proceeded against under Rule 21 of the K.S & S.S.R, the writ petitioners should be declared to have completed their probation, at the end of the prescribed period or the extended period of probation. In this case, there is no order of extention of probation passed, as contemplated under Rule 21 of the K.S & S.S.R . The three year period of the writ petitioners had been completed on 28.8.1998. Under Rule 24 of the K.S & S.S.R , there is an obligation on the part of the Government to appoint an approved probationer as a full member, 'at the earliest possible opportunity'. This has been reiterated by a Full Bench decision of this Court in **K.V.Sahadeva Kurup and others v. Board of Revenue and Others** *(ILR 1979 (1) Kerala 275)*.

25. I have already quoted above, paragraph 11 of High Court of M.P. and others v. Satya Narayan Jhavar's case, in which three lines of cases on the question of 'deemed confirmation' had been considered. The second line of case therein, is a situation where, there is an initial period of probation and extension thereof, thus, providing the maximum period of probation, beyond which it is not possible to extend the probation at all. In the case at hand, as already discussed above, after having joined on 28.8.1995, the continuous period of three years had been completed on 27.8.1998. There being no order of extension under Rule 21, there is no need to consider the so called extended period, contemplated under the K.S & S.S.R. Therefore, the declaration and the confirmation, as stated in Rule 24 of the K.S & S.S.R, must be at the earliest opportunity, and it must have been done, in the case of the first petitioner, before the charge memo had been issued on 16.1.2006. In other words, the issuance of the charge memo on 16.1.2006 to the first writ petitioner, do not stand in the way of his probation being declared, as he having completed the probation, at the end of the prescribed period, under Rule 20(a) of the K.S & S.S.R, and there being no such extension order of probation, under Rule 21 of the K.S & S.S.R. or any

unsuitability alleged within that period. Therefore, the reason given in Ext.P13 that there is a charge memo issued cannot stand in the way of the declaration of his probation.

26. It is true that explanations I and II to Rule 20 of the K.S & S.S.R prescribe the procedure under which the appointing authority may find a probationer as not suitable for full membership, as well as issuing of a show cause notice to him. As discussed above, the issuance of the charge memo was only on 16.1.2006. In respect of the second writ petitioner, there is no charge memo issued regarding the irregularities for the period of 1998-99 and 1999-2000. Even if the appointing authority finds that there is an unsuitability on the part of a particular employee, before the completion of the probation, in a particular post, if no charge memo is issued or disciplinary proceedings initiated, either there must be a declaration of the probation or an extension of the probation for the period of one year, as contemplated under Rule 20(c) of the K.S & S.S.R . In the circumstances of this case, neither the first writ petitioner, who had been issued with the charge memo on 16.1.2006, nor the allegation of the irregularities for the period of 1998-99 made against the second writ petitioner, would affect their declaration of probation. Hence, the reasons given in Exts.P13 and P14 thereof are unsustainable, for the

purpose of not declaring their probation, at the end of the maximum period of three years, commencing from 28.8.1995, the date of joining.

27. Further, under Explanation (I) of Rule 20 of the K.S & S.S.R, if the appointing authority finds that a probationer is not suitable for full membership, he has to take a decision, and in such situation, under Rule 20(c) of the K.S & S.S.R, unless the probation is extended, there shall be an order of discharge of that probationer from service, of course, after giving an opportunity of showing cause, as prescribed under Rule 20(c), as well as under Explanation II to Rule 20 of the K.S & S.S.R. Admittedly no such orders have been passed in this case.

28. The prayer of the writ petitioners is to quash Exts.P13 and P14. I have discussed above that the reasons given for non declaration of the probation and confirming the service in the post of Assistant Conservator of Forests are not sufficient, and hence, not legally sustainable. But that do not mean that the Government is in any way prevented from proceeding with the enquiries, or other proceedings, as per the law. But, I make it clear that Exts.P13 and P14 shall not be the cause or reason for not declaring the probation of the writ petitioners, as they have completed the period of probation,

as prescribed under Rule 20(a) of the K.S & S.S.R . I further make it clear that the Government may proceed against the writ petitioners, as per the law, provided, the Government finds that there is any irregularities or any misconduct, on the part of the writ petitioners, and they could be so proceeded, as per the Rules, Regulations or any law. In such circumstances, I am not intending to quash Exts.P13 and P14. But only hold that the reasons stated in Exts.P13 and P14 will not stand in the way of declaration of the probation of the writ petitioners and confirming the service of the writ petitioners in the post of Assistant Conservator of Forests.

29. In Ext.P17, the Government has relied on Rule 20A of the K.S & S.S.R. The same is reproduced below:-

> "**20A. Delay in the order of probation**:- Any delay in the issue of an order discharging a probationer under clause (ii) of sub-rule (a) of rule 19, or clause (i) or (ii) of sub-rule (b) of that rule or sub-rule (c) of rule 20, shall not entitle him to be deemed to have satisfactorily completed his probation."

30. An interpretation of the phraseology, *'any delay in the issue of an order discharging a probationer*', in the light of the provisions in K.S.& S.S.R., only means that there should be an issuance of a show cause notice, or other steps initiated, as contemplated under Explanation II, as well as, as stated in Rule 20(c)

of the K.S & S.S.R, and there was *'delay in issuing any consequential order'.* In other words, only when steps had been initiated or show cause notice was issued for discharging a probationer from service, during the prescribed period of probation or the extended period, as the case may be, and there is a delay in issuing an order, after perusing and considering the reply filed by the petitioner, if any, such delay in issuing the order, will not be of a ground or reason for the probationer claiming the deemed completion of the probation or the automatic completion of the probation.

31. In the case at hand, as discussed above, the writ petitioners have already completed the maximum prescribed period of three years. There is no order extending the period of probation. There is no pendency of any show cause notice, nor any proceedings have been initiated against them, at any time, within the probation period. Therefore, the application of Rule 20A of the K.S & S.S.R are unacceptable, in the facts of this case. Hence, the reasons stated in Ext.P17 applying Rule 20A of the K.S & S.S.R, will not come to the aid of the Government in not declaring the probation of the writ petitioners, and confirming the service in the post of Assistant Conservators of Forests. However, I am not quashing Ext.P17, as it is stated therein that the Government is proceeding against the writ

petitioners with vigilance/disciplinary cases. I make it clear that this judgment will not stand in the way of Government independently proceeding with such cases.

32. In the above circumstances, I direct the first respondent to issue orders declaring the probation of the writ petitioners in the category of the Assistant Conservator of Forests, and also confirming them, with effect from the respective dates of their entitlements. Consequential benefits shall also be granted to them, as per the law. This shall be done within 15 days from the date of receipt of a copy of this judgment.

33. The second writ petitioner had retired on 30.9.2005, on he attaining the age of 55 years. This writ petition was filed before this Court on 27.9.2005. This Court passed an interim order on 28.9.2005 as follows:-

> "In the facts and circumstances, there shall be an interim order directing that the retirement of the second petitioner from the State Forest Service on attaining the age of 55 years shall not affect his right/claim for appointment by promotion to Indian Forest service in respect of the vacancy in the year 2004."

34. The learned counsel for the writ petitioners contented that a direction may be given to the first respondent that in view of the above interim order, dated 28.9.2005, the second writ

petitioner is entitled for all the benefits and for appointment by promotion to the Indian Forest Service, notwithstanding his retirement, at the age of 55 years, from the State Forest Service. There is no challenge to the interim order. Hence, I find considerable force in this argument. Therefore, I direct the first respondent to grant him all the benefits, as ordered by this Court, on 28.9.2005.

The writ petition is disposed of as above.

J.M. JAMES,
JUDGE

nj.